UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

TERESA E. CAPPUCCI,	)	
Plaintiff	)	
	)	Civil Action
v.	)	
QUALITY CLEANING & RESTORATION, INC.,	)	
Defendant	)	

COMPLAINT
AND DEMAND FOR TRIAL BY JURY

Summary of Claim, Jurisdiction and Venue

Plaintiff, Teresa E. Cappucci, is a professional photographer of recognized stature who is seeking damages under the Visual Artists Rights Act ("VARA"), 17 U.S.C. §106A, for Defendant's grossly negligent conduct that caused many of her photographs and other works of visual art that were protected under VARA, to be destroyed or mutilated. Jurisdiction is conferred on this Court under VARA pursuant to 28 U.S.C. §1338(a) and proper venue exists under 28 U.S.C. §1400(a).

This Court has supplemental jurisdiction over Count II under 28 U.S.C. §1367(a), including a claim for damages under the Massachusetts Art Preservation Act, M.G.L. c. 231 § 85S, for defacing, mutilating or destroying hundreds of Cappucci's photographs and other works of fine art.

Basic Facts

1. Plaintiff, Teresa E. Cappucci is an individual who resides at 30 Oakman Street, Turners Falls, Franklin County, Massachusetts 01376. At all times material hereto, Cappucci has been an award-winning professional photographer and a photography instructor.

2. Defendant, Quality Cleaning & Restoration, Inc. is a corporation duly organized by law having a principal place of business at 72 Montague City Road, Greenfield, Franklin County, Massachusetts 01301. At all times material hereto, Defendant, Quality Cleaning & Restoration, Inc. has been in the business of providing water damage restoration services individuals including water removal, house drying and mold remediation to individuals and businesses.

3. Cappucci's residence in Turners Falls, Massachusetts, is a single family house that she owns and has occupied since approximately 1994.

4. At all times material hereto, Cappucci used the basement of her house as an office and photography studio for taking, printing, editing, matting and framing photographs and other works of fine art as well as for storing her photographic equipment, photographic portfolios, exhibition photographs, photographs, prints, works of fine art, negatives and photographic transparencies.

5. Cappucci also had a clothes washing machine and dryer in a small area of her basement.

6. Sometime during the Winter of 2015, water from outdoors leaked into Cappucci's house and caused damage to certain walls, ceilings and other areas. The house was insured against this kind of occurrence and Cappucci's insurance company sent an adjustor to her house in order to assess the cause and extent of said damage.

7. The insurance adjustor suggested that Cappucci hire someone who had the knowledge and equipment to determine if there was any moisture in the walls or ceilings, and if necessary, to dry the interior walls and ceilings of her house in order to prevent mold, mildew and other related problems. The insurance adjustor told Cappucci that he had worked with Defendant, Quality Cleaning & Restoration, Inc. and that they were competent and local.

8. In or around April 2015, Cappucci contacted Quality Cleaning & Restoration, Inc. (hereinafter "Quality").

9. Someone from Quality came to Cappucci's house within a few days, inspected the house, tested the walls and ceilings and determined that her house needed to have the moisture or humidity removed.

10. Quality put one or two large commercial dehumidifiers in the basement of Cappucci's house. The dehumidifiers were designed to extract water and moisture from the walls and ceilings of Cappucci's house.

11. Quality disconnected the drain hose from Cappucci's washing machine and connected the drain hose from one or more of the dehumidifiers to the washing machine drain pipe so that any water removed from Cappucci's walls and ceiling would be drained away.

12. After the dehumidifiers were operating in the basement of Cappucci's house for several days, Quality again tested Cappucci's house and determined that a sufficient amount of water and moisture in the walls and ceilings had been removed. Quality disconnected its dehumidifiers from Cappucci's washing machine drain pipe and removed its equipment from her basement.

13. On or about April 15, 2015, Cappucci took a load of dirty towels and clothes to her basement, put the towels and clothes into her washing machine, put in laundry detergent, bleach and fabric softener, set the water temperature to hot, turned on the washing machine and went upstairs to grade and critique assignments that her photography students had submitted to her.

14. About six or seven hours later, Cappucci proceeded to the basement so that she could take her laundry from the washing machine and put it into her dryer. When she walked down a few stairs, she felt moisture in the air and saw that her basement was flooded with up to six (6) inches of water.

15. At first, Cappucci had no idea where the water was coming from. Subsequently, she discovered that when Quality disconnected its dehumidifiers from Cappucci's washing machine drain pipe, it failed and neglected to reconnect the washing machine drain hose to the drain pipe.

16. As a result, the washing machine ran continuously and drained water onto the floor spewing hundreds of gallons of water into Cappucci's basement.

17. The water damaged, destroyed, distorted, defaced or mutilated thousands of negatives, transparencies, hundreds of photographs, and almost her entire photographic and fine art portfolio and photographic and fine art works, as well as still and video cameras, lighting equipment and other photography related equipment and frames, mats, specialty papers, supplies, and the flooring, walls and woodwork in her basement.

Count I
(Violation of the Visual Artists Rights Act ("VARA")

18. Cappucci repeats and realleges Paragraphs 1 through 17 of the Complaint as if restated and repeated herein in their entirety.

19. Many of Cappucci's negatives, transparencies, photographs, photographic and fine art portfolios and other works of fine art that were in her basement are works of visual art of recognized stature and they are protected under the provisions of the Visual Artists Rights Act, 17 U.S.C. § 106A ("VARA").

20. Quality's failure to reconnect the washing machine drain hose to the drain pipe was grossly negligent and caused many of Cappucci's works of visual art that were in her basement to be mutilated or destroyed in violation of the provisions of VARA.

21. As a result, Cappucci's honor and reputation as an artist have been prejudiced, and her photographs and other works of visual art have been mutilated or destroyed in violation of VARA, all to her great damage.

Count II
(Violation of the Massachusetts Art Preservation Act ("MAPA")

22. Cappucci repeats and realleges Paragraphs 1 through 17 of the Complaint as if restated and repeated herein in their entirety.

23. Many of Cappucci's negatives, transparencies, photographs, photographic and fine art portfolios and other works of fine art that were in her basement are works of fine art of recognized quality and they are protected under the provisions of the Massachusetts Art Preservation Act, M.G.L. c. 231 § 85S ("MAPA").

24. Quality's failure to reconnect the washing machine drain hose to the drain pipe was grossly negligent as such phrase is defined in MAPA, and said negligence caused many of Cappucci's photographs and other works of fine art that were in her basement to be defaced, mutilated or destroyed in violation of the provisions of MAPA.

25. As a result, Cappucci's reputation as an artist has been prejudiced, and her photographs and other works of fine art have been defaced, mutilated or destroyed in violation of MAPA, all to her great damage.

WHEREFORE, Plaintiff, TERESA E. CAPPUCCI demands judgment against the Defendant, Quality Cleaning and Restoration, Inc., as follows:

a) That under Count I, Defendant be required to pay Plaintiff such actual damages as Plaintiff has sustained in consequence of Defendant's gross negligence in damaging or destroying Plaintiff's photographs and other works of visual art that were protected under the provisions of the Visual Artists Rights Act ("VARA");

b) That under Count I, in lieu of Plaintiff's actual damages under VARA, that Defendant be required to pay to Plaintiff such Statutory Damages as to the Court shall appear just within the provisions of VARA, in a sum not less than $750 nor more than $30,000, for each photograph or work of visual art that has been damaged, destroyed or mutilated in violation of VARA, or if the Court finds that Defendant's actions were committed willfully, such statutory damages as to the Court shall appear just within the provisions of VARA, in a sum up to and including $150,000, for each work of visual art that has been damaged, destroyed or mutilated;

c) That under Count II, this Court award Plaintiff damages against Defendant for the value of all photographs and other works of fine art that have been defaced, mutilated or destroyed under the provisions of MAPA;

d) That Plaintiff be awarded her costs and attorney's fees under Count I (VARA) and Count II (MAPA).

e) That Plaintiff have such other and further relief as is deemed to be just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY

Teresa E. Cappucci,
By her Attorney,

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Dated: April 6, 2017